

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

9

DECISION

**TOPIC Clean Water and Drinking Water State Revolving Loan Funds Amended
and Restated Joint Agency Agreement between the Iowa Department of
Natural Resources and the Iowa Finance Authority**

Environmental Protection Commission approval is sought for a joint state agency agreement for administration of the Clean Water and Drinking Water State Revolving Fund (SRF) programs. DNR and the Iowa Finance Authority are assigned responsibilities in the Iowa Code for jointly administering the SRF programs. The proposed agreement will take the place of two previous documents:

1. A separate agreement for the Clean Water SRF. This new agreement recognizes the role IFA is playing in administering the financial operations of all of the infrastructure and non-point source CWSRF programs.
2. A separate agreement for the Drinking Water SRF. IFA has also taken over financial operations for DWSRF loans.

In addition, an assignment agreement between DNR and IFA addressed the disposition of loan and administrative funds under the Master Trust Agreement. The assignment agreement will remain effective for disbursements under previously signed loan agreements but the proposed agreement will cover program administrative costs.

The proposed agreement reaffirms the cooperative nature of the relationship between the two agencies. The agreement also outlines the individual duties of each agency:

- IFA is primarily responsible for ensuring the sustainable financial operation of the SRF programs, including issuance of bonds, loan processing and disbursements, financial accounting, investment of funds, and reimbursement of administrative costs.
- DNR is primarily responsible for serving as lead agency for the operating agreement with the U.S. Environmental Protection Agency, including preparation of capitalization grant requests and drawing of federal funds, Intended Use Plan and annual report preparation, project review, compliance with federal requirements, implementation of set-aside workplans, and coordination with IFA on administrative budgets.

The agreement was approved by the Iowa Finance Authority Board of Directors on November 7.

Patti Cale-Finnegan
Water Quality Bureau
November 8, 2007

Iowa Code Chapter 28E Agreement

Between

IOWA DEPARTMENT OF NATURAL RESOURCES

And

IOWA FINANCE AUTHORITY

**AGREEMENT TITLE: CLEAN WATER and DRINKING WATER
STATE REVOLVING LOAN FUNDS
AMENDED AND RESTATED
JOINT STATE AGENCY AGREEMENT**

This Agreement was approved by the Environmental Protection Commission
on December 4, 2007.

This Agreement was approved by the Iowa Finance Authority Board of Directors
on November 7, 2007.

**CLEAN WATER and DRINKING WATER
STATE REVOLVING LOAN FUNDS
AMENDED AND RESTATED
JOINT STATE AGENCY AGREEMENT**

THIS AMENDED AND RESTATED JOINT STATE AGENCY AGREEMENT (the "Agreement") is made and entered into as of December 4, 2007 by and between the Iowa Finance Authority (the "Authority"), a public instrumentality and agency of the State of Iowa (the "State"), and the Department of Natural Resources, a department of the State (the "Department").

WHEREAS, pursuant to Sections 16.131, 16.132 and Part 5 of Division III of Chapter 455B (Sections 455B.291 through 455B.299, inclusive) of the Code of Iowa, 2007, as amended (collectively, the "Code"), the Iowa Water Pollution Control Works Financing Program (the "Clean Water Program") was created to implement provisions of the federal Water Pollution Control Act of 1972, as amended by the Water Quality Act of 1987 (collectively, the "Clean Water Act"); and the Iowa Drinking Water Facilities Financing Program (the "Drinking Water Program" and, together with the Clean Water Program, the "SRF Programs") was created to implement provisions of the Safe Drinking Water Act (SDWA) Amendments of 1996; and

WHEREAS, the Authority and the Department entered into a Joint State Agency Agreement dated February 1, 1989, as amended by an Amended and Restated Joint State Agency Agreement dated October 25, 2004 (collectively, the "Prior CW Agreement"); and

WHEREAS, the Authority and the Department entered into a Joint State Agency Agreement dated as of June 1, 1999 (the "Prior DW Agreement"); and

WHEREAS, the Authority and the Department entered into an Assignment Agreement dated as of August 1, 2006 (the "Assignment Agreement" and, together with the Prior CW Agreement and the Prior DW Agreement, the "Prior SRF Agreements"); and

WHEREAS, the Authority and the Department desire that execution of this Agreement will rescind and replace the Prior CW Agreement and the Prior DW Agreement, provided, however, that except as amended and supplemented by this Agreement, the Assignment Agreement shall remain in effect pursuant to its terms; and

WHEREAS, the Authority and the Department are empowered and directed to undertake the SRF Programs in a joint and cooperative manner, and to perform the duties and exercise the powers delegated to each of them in the Code; and

WHEREAS, the Authority and the Department believe it is necessary to enter into this Agreement in order to jointly undertake the SRF Programs and specifically outline the duties and powers each of them shall perform and exercise.

NOW THEREFORE, in consideration of the premises and the covenants and agreement hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

- I. PURPOSE. This Agreement rescinds and replaces the Prior SRF Agreements concerning the SRF Programs. The purpose of this Agreement is to provide for the joint exercise of the respective powers of the parties hereto in connection with the Programs and the Code

and pursuant to the provisions of Iowa Code Chapter 28E, as amended. The parties hereby agree that, should an alternate basis of joint operation become available to the parties pursuant to Iowa law which would be more advantageous to both parties, part or all of this Agreement may be terminated as herein provided and the SRF Programs continued pursuant to said alternate basis.

II. DESCRIPTION OF SRF PROGRAMS AND ALLOCATION OF DUTIES AND OBLIGATIONS.

The parties hereto are entering into the Agreement to promote the efficient and effective operation of the SRF Programs, including, but not limited to, the funding and administration of the revolving loan funds (the "Loan Funds"), the State administration fund and the SRF administration account (together, the "Administration Fund") and the lending of moneys from the Loan Funds to Iowa recipients for purposes of the SRF Programs and the Code. In order to accomplish the purposes of this Agreement and to promote the SRF Programs, the Authority and the Department hereby mutually agree to the following division of duties and obligations.

- A. The Department and the Authority shall cooperatively develop and approve goals, implementation plans, and promotional and marketing plans and efforts.
- B. The Authority shall be primarily responsible for ensuring the sustainable financial operation of the SRF Programs in perpetuity. In carrying out this responsibility, the Authority shall:
 1. Structure and negotiate the sale of revenue bonds, in accordance with the Code and federal regulations, to fund the SRF Programs, including the State's share of moneys (the "State Match");
 2. Retain professional advisors to assist in structuring sales of revenue bonds for purposes of funding the State Match or leveraging for the SRF Programs;
 3. Prepare or cause to be prepared all documentation required to loan moneys from the Loan Funds when program requirements have been met by an applicant, disburse or direct the timely disbursement of moneys to loan recipients for eligible project costs in accordance with all applicable federal and State laws and regulations, and ensure the timely repayment of such loans;
 4. Review, process, underwrite and approve loan applications and documentation;
 5. Provide the Department timely notification for draws of capitalization grant proceeds to be used in the funding of the SRF Programs;
 6. Act as financial agent and coordinate the creation of all documents relating to funding the non-point source programs, including, but not limited to, the Local Water Protection program, the Livestock Water Quality program, the Onsite Wastewater Assistance program and the General Non-Point Source program;
 7. Cooperate with the Department on the development of the Intended Use Plans and schedule of commitments to make loans from the Loan Funds;

8. Establish, maintain, and monitor official record files that meet retention requirements for each loan made under the SRF Programs;
 9. Coordinate all matters relating to the repayment of loans under the SRF Programs to assure adequate moneys to pay, when due, the principal of, premium, if any, and interest on the revenue bonds issued by the Authority for purposes of the SRF Programs, and to assure and maintain the financial integrity of the SRF Programs;
 10. Oversee and maintain financial accounting records for all activity of the SRF Programs, including but not limited to accounting for the loans, the loan repayments, the bonds and related debt service payments, the purchase and sale of investments, the receipt of investment income, the payment of expenses and the receipt and accounting of program and non-program income;
 11. Hold accounts for the SRF programs as described in Exhibit A;
 12. Prepare and distribute financial reports to the Department in order to comply with management and reporting requirements of the SRF Programs;
 13. Prepare a budget for the administrative expenses for the Authority related to the SRF Programs, submit a copy to the Department and coordinate with the Department on how those expenses will be paid;
 14. Reimburse the Department for all documented fees and expenses of the SRF Programs, provided that such reimbursement shall be made solely from the Administrative Fund and corresponds to the budget plans submitted by the Department;
 15. Perform all duties and obligations expressly provided by the Code and other State or federal laws relating to the SRF Programs or as expressly modified by this Agreement;
 16. Cooperate with and assist the Department in all other lawful undertakings necessary to implement and promote the SRF Programs, including promulgation of necessary rules;
 17. Direct investments of all funds associated with the SRF Programs; and
 18. Host the on-line applications and web sites concerning the SRF Programs, including but not limited to the "IowaSRF.com" site, and cooperate with the Department in development and maintenance of such on-line tools and sites.
- C. The Department shall serve as lead agency and enter into operating agreements with the U.S. Environmental Protection Agency for management of the SRF Programs. In carrying out that responsibility, the Department shall:
1. Prepare, or cause to be prepared, all documents required by the U.S. Environmental Protection Agency or any other federal or Iowa agency to implement the SRF Programs, including but not limited to, obtaining federal funding for the SRF Programs;

2. Review and approve project proposals according to Chapter 567 IAC 90 through 93 and 567 IAC 40 through 44 to ensure that all applicable environmental regulations are met;
3. Coordinate the issuance of operating permits, issue construction permits, monitor the progress of each funded project during construction and execute final inspection at completion for each project funded through the SRF Programs;
4. Regularly provide information to the Authority on changes that could impact the eligibility or funding schedules of projects;
5. Insure the applicable federal requirements for projects are met, including but not limited to the NEPA environmental reviews;
6. Coordinate the preparation of the Intended Use Plans and schedule of commitments to make loans;
7. Develop and implement the set-aside workplans required by EPA for the Drinking Water capitalization grants. Submit copy of workplans to the Authority and regularly provide updates on the expenses paid from and balances existing in the set-asides.
8. Prepare a budget for the administrative expenses for the Department related to the SRF Programs, submit a copy to the Authority and coordinate with the Authority on how those expenses will be paid;
9. Execute documents on behalf of the Department and the State necessary to implement the SRF Programs;
10. Coordinate the management of the SRF Programs with the Authority to the extent necessary to assist the Authority in financing the SRF Programs;
11. Perform all duties and obligations expressly provided by the Code and other State or federal laws relating to the SRF Programs or as expressly modified by this Agreement; and
12. Cooperate with and assist the Authority in all other lawful undertakings necessary to implement and promote the SRF Programs, including the promulgation of necessary rules.

III. LIABILITY. Nothing in this Agreement shall be construed to create joint or several liability of a party for the acts, omissions or obligations of the other.

IV. METHOD OF APPROVAL. The parties hereto shall approve this Agreement by motion or resolution which motion or resolution shall authorize the Executive Director of the Authority and the Director of the Department to execute this Agreement.

- V. FILING WITH SECRETARY OF STATE. When this Agreement has been approved by the parties hereto, this Agreement shall be filed with the Secretary of State of the State of Iowa in accordance with the provisions of Iowa Code Section 28E.8, as amended.
- VI. RECORDING WITH POLK COUNTY RECORDER. When this Agreement has been filed with the Secretary of State of the State of Iowa, this Agreement shall be recorded in the office of the Polk County Recorder in accordance with the provisions of Iowa Code Section 28E.8, as amended.
- VII. EFFECTIVE DATE. This Agreement shall be effective from and after the date on which this Agreement is recorded in the office of the Polk County Recorder.
- VIII. DURATION. This Agreement shall be effective from the effective date herein provided until terminated as herein provided.
- IX. TERM AND TERMINATION. The term of this Agreement shall be effective as long as bonds are outstanding under the SRF Programs. This Agreement may not be terminated except by mutual agreement of the parties or by operation of law. The party desiring to terminate this Agreement shall serve written notice of its desire to terminate on the other party. If, upon termination of this Agreement there remains any property or assets, such property or assets shall be disbursed in accordance with the bond financing documents and the Act. The termination of this Agreement shall not relieve either party hereto of any obligations or liabilities accrued to the effective date of such termination.
- X. ADMINISTRATION. A new legal entity is not being created pursuant to this Agreement. The administrator for the joint undertaking described in this Agreement shall be Administrator, Environmental Services Division of the Department.
- XI. NOTICES. Any notice under this Agreement shall be in writing and shall be deemed to be given when deposited in the United States Post Office or hand delivered.

Notices to the Authority shall be addressed to:

Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312
Attention: Executive Director

Notices to the Department shall be addressed to:

Department of Natural Resources of the State of Iowa
Henry A. Wallace Building
502 E. Ninth Street
Des Moines, Iowa 50319
Attention: Director

- XII. GOVERNING LAW. This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State now or hereinafter applicable hereto.
- XIII. MISCELLANEOUS. It is the intent of the parties to this Agreement to provide for an efficient operation of the SRF Programs. To this end the parties agree that each will strive to do equity in all things concerning this Agreement. The parties agree to proceed with all

diligence in the performance of their respective undertakings in connection with this Agreement.

XIV. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto and may not be changed except by an amendment in writing signed by the parties hereto.

XV. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns.

XVI. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in five counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

XVII. SEVERABILITY. If any clause, provision or section of this Agreement shall, for any reason, be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections, hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. In case any agreement or obligation contained in this Agreement be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the applicable party hereto, to the full extent permitted by law. Failure of a party hereto to enter into this Agreement in accordance with Iowa law or inability of a party hereto to be a party to this Agreement shall not affect the validity or enforceability of this Agreement as to the other party.

IN WITNESS WHEREOF, the Authority and the Department have caused this Agreement to be executed and entered into as of the date first above written.

Signed and sworn to before me on _____
(date)

Iowa Finance Authority

By: _____

Name: Bret L. Mills

Title: Executive Director

Signature of Notary Public

Signed and sworn to before me on _____
(date)

Iowa Department of Natural Resources

By: _____

Name: Richard A. Leopold

Title: Director

Signature of Notary Public

EXHIBIT A

The Authority will establish and maintain the following four accounts at a state or national bank:

1. Clean Water SRF equity account
2. Clean Water SRF administration account
3. Drinking Water SRF equity account
4. Drinking Water SRF administration account

From time to time, the Authority will direct the bank officer or trustee to transfer certain sums to an account held by the Authority for the following purposes:

From the Clean Water SRF equity account:

- To SRF loan recipients for disbursements of loan proceeds for eligible expenses as defined by the Clean Water Act and Iowa Code governing the Clean Water SRF program
- To participating financial institutions for linked deposits for eligible non point source loans
- To participating financial institutions for the purchase of loan participations for qualified loans
- For any other uses authorized, permitted or allowed by the Clean Water Act

From the Clean Water SRF administration account:

- To reimburse the Authority for eligible expenses relating to the administration of the Clean Water SRF program
- To reimburse the Department for eligible expenses relating to the administration of the Clean Water SRF program
- For any other uses authorized, permitted or allowed by the Clean Water Act

From the Drinking Water SRF equity account:

- To SRF loan recipients for disbursements of loan proceeds for eligible expenses as defined by the Safe Drinking Water Act and the Iowa Code governing the Drinking Water SRF program
- For any other uses authorized, permitted or allowed by the Safe Drinking Water Act

From the Drinking Water SRF administration account:

- To reimburse the Authority for eligible expenses relating to the administration of the Drinking Water SRF programs
- To reimburse the Department for eligible expenses relating to the administration of the Drinking Water SRF program
- For any other uses authorized, permitted or allowed by the Safe Drinking Water Act

All principal and interest received from SRF program loans pledged to outstanding bond issues will be deposited in the appropriate revenue accounts with the Trustee.

All principal and interest received from SRF program loans not pledged to outstanding bond issues will be deposited in the appropriate equity account.

All principal and interest received from non point source linked deposits, loans and loan participations will be deposited in the Clean Water Equity account.

All initiation fees and servicing fees will be deposited in the appropriate administration account.

All interest earned on the funds will be deposited in the appropriate revenue interest account if needed to pay debt service or deposited in the appropriate equity account if not needed for debt service.